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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 813

CLARENCE I. JUSTHEIM, *et al.*, *Petitioners*,

v.

DOUGLAS McKAY, Secretary of the Interior, *et al.*, *Respondents*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above case on January 5, 1956.

OPINIONS BELOW

The opinion of the District Court for the District of Columbia (R. Jt. App. 40) is reported at 123 F. Supp. 560.

The opinion of the Court of Appeals for the District of Columbia Circuit (Case No. 12,561) is dated January 5, 1956, and is set out in Appendix "A", *infra*, and is reported in U.S. App. D.C. and in 229 F. 2d 29.

JURISDICTION

The judgment of the Court of Appeals for the District of Columbia Circuit was made and entered on January 5, 1956 (R. 62; App. "A," *infra*). The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTION PRESENTED

Between April 1, 1938, and August 11, 1947, Petitioners filed fifty applications for oil and gas leases under the Mineral Leasing Act of 1920 (c. 85, 41 Stat. 437, as amended, 30 U.S.C. 181 *et seq.*). The lands covered by all of said applications, with the exception of portions of four thereof, cover lands claimed by the United States as well as by Petitioners to be in the marginal sea, that is, lands off the coast of California below low tide and outside the inland waters of the State of California.

The Secretary of the Interior affirmed[1] decisions of the Bureau of Land Management[2] rejecting said applications on the ground that the Mineral Leasing Act did not apply to submerged lands in the marginal sea. The District Court dismissed the Petitioners' complaint on the same premise[3] and this decision was affirmed by the Court of Appeals.[4]

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[1] See R. Jt. App. 30, 6-7, 19-25.

[2] See R. Jt. App. 30, 6, 11-18.

[3] See R. Jt. App. 40.

[4] See R. 58; App. "A," *infra*.

Accordingly, the only question presented is: Whether the Mineral Leasing Act of 1920, as amended, applied to and covered the leasing for oil and gas of submerged lands in the marginal sea at the time the Petitioners filed their respective applications for oil and gas leases as to such lands.

STATUTE INVOLVED

The pertinent portion of the Mineral Leasing Act of February 25, 1920, (c. 85, 41 Stat. 437, as amended, 30 U.S.C. 181 *et seq.*) is as follows:

> *"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That deposits of coal, phosphate, sodium, oil, oil shale, or gas, and lands containing such deposits owned by the United States, including those in national forests, but excluding lands acquired under the Act known as the Appalachian Forest Act, approved March 1, 1911 (Thirty-sixth Statutes, page 961), and those in national parks, and in lands withdrawn or reserved for military or naval uses or purposes, except as hereinafter provided, shall be subject to disposition in the form and manner provided by this Act * * *."

STATEMENT OF THE CASE

Suits were commenced September 30, 1949, in the District Court for the District of Columbia to obtain a review of decisions by the Department of the Interior to the effect that the Mineral Leasing Act of 1920 did not apply to submerged lands in the marginal sea and to obtain a declaratory judgment and injunctive relief. (R. Jt. App. 2) Jurisdiction of the trial court was invoked upon the grounds of diversity of citizenship, construction of a Federal Statute (28

U.S.C. 1331, 1332) general equity jurisdiction under the Declaratory Judgment Act (28 U.S.C. 2201) and Section 10 of the Administrative Procedures Act (5 U.S.C. 1009). The case was submitted to the trial court on the pleadings and the stipulation of the parties as a matter of law. (R. Jt. App. 31)

Between April 1, 1938, and August 11, 1947, the forty Petitioners filed fifty applications for oil and gas prospecting permits or leases under the said Mineral Leasing Act.

By decision dated September 8, 1947, (R. Jt. App. 11), the Director of the Bureau of Land Management rejected (along with a number of other applications) twenty-eight of the applications which had been filed by Petitioners, including the eleven which had been filed in 1938, the two which had been filed in 1939, the seven which had been filed in 1945, five of the six which had been filed in 1946 and three of the twenty-four which had been filed in 1947. By subsequent decisions dated respectively October 16, 1947, November 10, 1947, December 31, 1947, and February 18, 1948, said Director rejected the remainder of the applications which had been filed by Petitioners. (R. Jt. App. 6, 30)

Each of the Director's decisions was based upon the premise that said Mineral Leasing Act did not apply to submerged lands in the marginal sea.

A timely appeal was filed with the Department of the Interior as to each of Petitioners' applications from the Director's decision rejecting such application. (R. Jt. App. 6, 30)

By several decisions, dated July 30, 1948, and subsequently thereto, Mastin G. White, Solicitor of the De-

partment of the Interior, affirmed the respective Director's decisions above referred to. Each of these decisions of Mastin G. White was a simple statement of affirmance, with a reference to the Secretary of the Interior's decision of October 6, 1947, (A-20806) in the case of *L. B. Beer, et al.,* (R. Jt. App. 21-25)

When the matter was brought before the District Court, as a matter of law as aforesaid, that court concluded (R. Jt. App. 56) that:

> "The Mineral Leasing Act * * * does not apply to lands underlying the marginal sea off the coast of California and did not so apply at the times when the plaintiffs (Petitioners) made their respective applications thereunder."

Upon appeal, the Court of Appeals affirmed the District Court decision. (R. 58; App. "A," *infra.*)

Petitioners contend that the Secretary of the Interior interpreted and applied the Mineral Leasing Act in a way contrary to its explicit terms and that his decisions rejecting Petitioners' applications, and the decisions of the courts below upholding the Secretary's interpretation and application of the Mineral Leasing Act, were and are erroneous and contrary to law. The language of the Mineral Leasing Act is inclusive and applies to specified mineral deposits and lands containing such deposits "owned by the United States" except for specifically enumerated exclusions. The lands in the marginal sea have been held to be the property of the United States. The Act contains no restriction limiting its application to "public lands", but even if it were so restricted, as the courts below held that Congress meant to say, notwithstanding the fact that Congress had not so said, lands in the mar-

ginal sea have by this Court been held to be "public lands" belonging to the United States.

Petitioners did not ask the courts below to assume any administrative functions as to Petitioners' applications or to order the issuance of any lease pursuant to any such application. Petitioners, rather, asked the courts below to determine that the Mineral Leasing Act applied to and covered the leasing of submerged lands in the marginal sea off the coast of California and that the Secretary of the Interior be directed to reinstate or cause to be reinstated each of Petitioners' applications and to consider or cause to be considered each said application on its merits under said Mineral Leasing Act. (R. Jt. App. 8-9) Petitioners have made it clear that they did not seek and that they recognized that they could not obtain any rights as to any lands under navigable inland waters, or as to any tidelands (as distinguished from submerged lands in the marginal sea) or as to any lands within the known structure of a productive oil or gas field at the time of the filing of any lease application.

REASONS FOR GRANTING THE WRIT

The question of whether or not the Mineral Leasing Act of 1920 applies to submerged lands in the marginal sea is an important question of Federal law which has not been but which, for the reasons hereinafter stated, should be decided by this Court. The decisions of the courts below are the first and only judicial decisions on this question.

The Secretary of the Interior interpreted and applied the statute in a way contrary to its explicit terms. The courts below, in upholding the Secretary's actions,

decided this Federal question in a way and on premises in conflict with applicable decisions of this Court.

Determination of the premises upon which the Court of Appeals rendered its decision (R. 58; App. "A," *infra.*) requires reference to the decision of the District Court (R. Jt. App. 40) for the reason that the Court of Appeals, in its brief decision, in effect adopted the opinion of the District Court, stating:

> "We think its reasoning was sound and we need not repeat it here." (R. 59; App. "A," *infra.*)

The Mineral Leasing Act by its explicit terms provided:

> " * * * That deposits of coal, phosphate, sodium, oil, oil shale, or gas, and lands containing such deposits owned by the United States, * * * shall be subject to disposition in the form and manner provided by this Act * * *."

The District Court, relying largely upon the use of the words "public domain" in the title of the Mineral Leasing Act, construed the words "public domain" as equivalent to "public lands" and declared:

> "Since Congress intended that this Act should apply only to public lands, the critical question in this case is whether marginal sea lands are public lands." (R. Jt. App. 48)

The District Court, in holding that submerged lands in the marginal sea were not public lands, made no reference to the decision of this Court in *Hynes* v. *Grimes Packing Co.*, 337 U.S. 86. That case involved *Public Land Order 128*, 8 F.R. 8557, whereunder the Secretary of the Interior had reserved certain lands and adjacent coastal waters along the coast of Alaska.

This Court reversed a contrary holding of the Court of Appeals of the Ninth Circuit (165 F. 2d 323) and held that the submerged lands in the marginal sea off the coast of Alaska were public lands subject to withdrawal under the Acts of June 25, 1910, 36 Stat. 847, 43 U.S.C. 141 and May 1, 1936, 49 Stat. 1250, 48 U.S.C. 358a, each of which Acts was by its express terms applicable only to "public lands." In so doing, this Court specifically pointed out the inapplicability of the "tidelands" cases to lands in the marginal sea. Those same "tidelands cases" were, in the case at bar, relied upon by the District Court and, through adoption of the District Court reasoning, by the Court of Appeals for the contrary conclusion that submerged lands in the marginal sea were not public lands.

The Court of Appeals, in its decision below, undertook to brush aside this Court's decision in *Hynes* v. *Grimes Packing Co.* (*supra*) with the statement that this Court's "conclusion rested upon 'the history and habits of Alaska natives and the course of administration of Indian affairs in that Territory'." The Act of May 1, 1936 which was involved in the *Hynes* case imposed upon the thereby granted withdrawal authority two restrictions—first, that lands to be withdrawn be "public lands," and second, that such public lands be "actually occupied by Indians or Eskimos." This Court's conclusion in the *Hynes* case that marginal sea lands were public lands owned by the United States did not depend upon the "history and habits of Alaska natives" as the Court of Appeals said. The reference by this Court to the "history and habits of Alaska natives" was made to point out that the second and superimposed requirement of occupancy had been satisfied.

The District Court, in support of its opinion (adopted as aforesaid by the Court of Appeals) that the "marginal sea lands have not been and cannot now be regarded as public lands of the United States", not only relied upon the "tidelands" cases which, as above mentioned, this Court, in the *Hynes* case, held to be inapplicable to lands in the marginal sea, but also upon the further premise that lands in the marginal sea were not public lands because "there had been no holding of ownership by the United States."

This "no holding of ownership" premise relied upon by the courts below is in direct conflict with decisions of this Court. In *United States* v. *Texas*, 339 U.S. 707 at pp. 717-18, this Court said:

> "Texas prior to her admission was a Republic. We assume that as a Republic she had not only full sovereignty over the marginal sea *but ownership of it, of the land underlying it, and of all the riches which it held.* In other words, we assume that it then had the *dominion* and *imperium* in and over this belt which the United States now claims."
>
> * * *
>
> "We *hold* that as an incident to the transfer of that sovereignty *any claim* that Texas may have had to the marginal sea *was relinquished to the* United States." (Emphasis supplied.)

In *Hynes* v. *Grimes Packing Co.*, 337 U.S. 86 at p. 111 this Court said:

> "The *title* to the uplands and waters in question is in the United States." (Emphasis supplied.)

In *Alabama* v. *Texas, et al.* and *Rhode Island, et al.* v. *Louisiana, et al.*, 347 U.S. 272, there was presented to this Court the question of the validity of the Sub-

merged Lands Act of May 22, 1953, 67 Stat. 29, 43 U.S.C. 1301 *et seq.*, wherein Congress in Section 3(a) declared it to be

> "* * * in the public interest that (1) *title* to and *ownership* of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters * * * be, and they *are*, * * * *vested* in and *assigned* to the respective States * * * ." (Emphasis supplied.)

In upholding the conveyance to the States (347 U.S. 272 at pp. 273-274), this Court said:

> "Article IV, § 3, Cl. 2, United States Constitution. United States v. Gratiot, 14 Pet. 526, 537, 10 L. Ed. 573: *The power of Congress to dispose of any kind of property belonging to the United States* 'is vested in Congress without limitation.' United States v. Midwest Oil Co. 236 U.S. 459, 474, 35 S. Ct. 309, 313, 59 L. Ed. 673: 'For it must be borne in mind that Congress not only has a legislative power over the *public domain*, but *it* also *exercises the powers of the proprietor therein*. Congress "may deal with *such lands* precisely as an ordinary individual may deal with farming property. It may sell or withhold them from sale." Camfield v. United States, 167 U.S. (518) 524, 17 S. Ct. 864, 42 L. Ed. 260; Light v. United States, 220 U.S. 523, 536, 31 S. Ct. 485, 55 L. Ed. (570) 574.' United States v. City and County of San Francisco, 310 U.S. 16, 29-30, 60 S. Ct. 749, 756, 84 L. Ed. 1050: 'Article 4 Section 3, Cl. 2 of the Constitution provides that "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." The power over the *public land* thus entrusted to Congress is without limitations.' " (Emphasis supplied.)

As hereinabove pointed out, the rationale of the Court of Appeals' decision must be found in the "memorandum opinion" (R. Jt. App. 40, 123 F. Supp. 560) of the District Court, of which the Court of Appeals said:

> "We think its reasoning is sound and we need not repeat it here." (App. "A", *infra;* R. 59.)

The reasoning of the District Court decision is this:

> " * * * the court has concluded that the (Mineral Leasing) Act was intended to apply, and does apply, only to public lands * * *." (R. Jt. App. 48);
>
> "Since Congress intended that this Act should apply only to public lands, the critical question in this case is whether marginal sea lands are public lands." (R. Jt. App. 48);
>
> " * * * the marginal sea lands have not been and cannot now be regarded as public lands of the United States." (R. Jt. App. 51);
>
> "The court concludes, therefore, that the marginal sea lands are not public lands of the United States, and that they are not subject to lease under the Mineral Leasing Act which is limited in its applicability to public lands of the United States." (R. Jt. App. 54).

Apart from the controverted question of the correct "interpretation" which attributes an unexpressed "public lands" limitation to the clear statutory language of mineral "deposits * * * and lands containing such deposits owned by the United States", the decisions of the courts below rest upon "the critical question" of whether marginal sea lands are public lands.

Petitioners submit that the conclusions of the courts below on that "critical question" are, as above shown, in clear conflict with the decisions of this court in *Hynes* v. *Grimes Packing Co.*, 337 U.S. 86, and *Alabama* v. *Texas et al.*, 347 U.S. 272.

This case alone will determine the rights of forty Petitioners under fifty applications, filed under the Mineral Leasing Act, covering thousands of acres as to which the lease rights are worth millions of dollars. Important property rights are involved. This importance of the issues is not, however, restricted to Petitioners. Numerous other applications involved in nine other cases pending before the District Court of the District of Columbia depend upon the outcome of this case.

Congress itself recognized the importance of such rights as Petitioners and other applicants might have and, in enacting the Submerged Lands Act of May 22, 1953, c. 65, 67 Stat. 29, 43 U.S.C. 1301 *et seq.*, expressly provided for the protection of such rights in Section 8 (43, U.S.C. 1315) thereof as follows:

> "Nothing contained in this chapter shall affect such rights, if any, as may have been acquired under any law of the United States by any person in lands subject to this chapter and such rights, if any, shall be governed by the law in effect at the time they may have been acquired: * * *"

In recognition of the object and effect of this quoted language of said Section 8, the District Court, in its opinion below (R. Jt. App. 52), stated:

> "Thus such rights, if any, as the Plaintiffs (Petitioners) may have acquired have not been

impaired in any way although the submerged lands upon which the lease applications have been filed are no longer under the jurisdiction of the United States."

The Mineral Leasing Act of 1920 represented and still represents the most important enactment relating to this nation's mineral resources since the enactment of the General Mining Laws of 1872 (c. 152, 17 Stat. 91). The Mineral Leasing Act was enacted to meet a dire need for the minerals referred to in the Act. The Act permitted development and production of the specified minerals from deposits and lands which were closed to exploration and development under the then existing laws. The use by Congress of the Act's broad language of applicability to mineral "deposits * * * and lands containing such deposits owned by the United States" with only particularly stated exclusions, none of which are applicable in the case at bar, cannot be considered unintended in the light of the objectives of the legislation. Those objectives are found clearly expressed in the hearings and reports relating to the legislation. Illustrative of references made in these reports to the objectives of the Act is the statement found in Senate Report 116, 65th Cong. 1st Sess., as to S. 2812 (one of the forerunners of the Mineral Leasing Act):

> "This is an emergency measure * * * .
>
> "Never before in the history of the country, and we hope, never again, will there be such a vital necessity for a sudden and *enormous* supply of both oil and gasoline. *It will require the development to the maximum of every known supply of oil* to carry out our war program with relation to our Navy, motor vehicles, and flying machines.

"We must get oil now *wherever we can get it* and as fast as we can get it * * * .

"We respectfully urge most careful attention to some of the statements made by Mr. Doheny at the hearings upon the bill under consideration. Mr. Doheny said:

> ' * * * when asked by Mr. Baruch what regions I thought should be thrown open for development, *I answered that I thought any place, no matter to whom it belonged, whether to a private individual, a corporation, or the Government, that would produce oil in the greatest quantity with respect both to the amount of time and money invested.'*

"There should be no question in the mind of any Senator as to the necessity of this legislation." (Emphasis added.)

That the Interior Department considered the Mineral Leasing Act to apply to submerged lands in the marginal sea, if they were held to be the property of the United States, is indicated by its action with respect to Petitioners' applications. Action on Petitioners' applications, including the eleven filed in 1938 and the two in 1939, was held suspended until after this Court's decision of June 23, 1947, in *United States* v. *California,* 332 U.S. 19. That the deferring of action upon said applications was based upon the pendency of "litigation between the United States and the State of California with respect to such submerged lands adjacent to the State-owned tidelands along its shores" is conceded in the decision of the Director of the Bureau of Land Management (R. Jt. App. 11-12) rejecting such applications. Obviously, if the Department of the Interior had considered the Mineral Leasing Act inapplicable regardless of the out-

come of that litigation, the litigation would have been no reason for withholding action upon the applications.

After the announcement of this Court's decision in the *California* case, there developed great pressure to nullify the results of this Court's holding that the State of California had no title to submerged lands in the marginal sea off its coast. This pressure came from the affected coastal states and from lessees of those states. State lessees had gone upon lands involved in the case at bar under invalid state leases during the period the Interior Department was awaiting decision on the question of state title and accordingly was withholding action upon the applications which Petitioners and others had filed under the Mineral Leasing Act. Petitioners' applications and the other similar applications so held suspended *while* the *California* case was pending were rejected *after* this Court rendered its decision in that case. The granting of those applications would have adversely affected the efforts of affected coastal states and their lessees to acquire the rights which they had erroneously asserted.

Important principles are involved in this case. Ever important to the public is the question of the interpretation and application of acts of Congress. It is a matter of national concern whenever, through "interpretation" of a statute, there is departure from the "plain and explicit" language of the statute. The inherent dangers of permitting such departure are aptly pointed out in *Wilbur* v. *Krushnic*, 280 U.S. 318-19, which quotes from *Roberts, Treasurer* v. *United States*, 176 U.S. 221, 231.

If administrative or court "interpretation" can write into the Mineral Leasing Act a "public lands" limitation to restrict the Act's express applicability to "deposits * * * and lands * * * owned by the United States", the way is opened for other "interpretations" upon other occasions to be added in restriction of the Act's applicability.

If, despite this Court's holdings that submerged lands in the marginal sea are public lands of the United States, the courts below may base conclusions and deny property rights upon the contrary premise, the way is opened for other courts in other cases to base conclusions on premises contrary to decisions of this Court.

Property rights as well as civil liberties are objects of protection in the framework of our constitutional system. Property rights of many persons and of great value depend directly upon the outcome of this case. Property rights of many more will indirectly depend thereon.

There are circumstances which distinguish this case from most cases which involve statutory construction or interpretation—circumstances which, Petitioners submit, warrant review of the decision of the Court of Appeals:

1. The language of the Mineral Leasing Act declaring its applicability to the enumerated "deposits * * * and lands containing such deposits owned by the United States" is clear and unambiguous;

2. The Act expressly sets forth specific exclusions from the above mentioned clear inclusive provision;

3. The inclusive language includes, and the specific exclusions do not exclude, submerged lands in the marginal sea;

4. The initial major premise of the courts below that the Mineral Leasing Act applies only to public lands represents a limitation which the courts below supplied by "construction" since it is not to be found in the Act.

5. The ultimate conclusion of the courts below cannot flow from that initial major premise alone. It depends upon the second and superimposed premise that submerged lands in the marginal sea are not public lands.

6. That second premise is contrary to the decisions of this Court.

7. Incident to that second premise of the courts below was the included minor premise that marginal sea lands are not public lands *because* they have not been held to be owned by the United States.

8. That included minor premise is contrary to the decisions of this Court.

The decisions of the courts below are the first and only judicial decisions on the ultimate question in this case. The courts below decided that question as to the interpretation and application of the Federal Mineral Leasing Act on premises in conflict with applicable decisions of this Court. This case involves important principles and the valuable property rights of the forty Petitioners and the valuable property rights of others. The question presented, the conflicts with this Court's decisions, the principles involved and

the importance of the property rights render this a case of public importance.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this Petition for a Writ of Certiorari should be granted.

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